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| 10/776,839 | 02/11/2004 | Ludwig Busam | CM2725MQ | 3030 |

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THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
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CINCINNATI, OH 45202

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| EXAMINER |
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BOGART, MICHAEL G

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| ART UNIT | PAPER NUMBER |
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3761

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09/30/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|-------------------------------------|--|
| Office Action Summary | Application No. 10/776,839 | Applicant(s) BUSAM ET AL. | |
| | Examiner MICHAEL G. BOGART | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 26 August 2008 has been entered.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

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A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-6 and 8-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/717,234. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '234 application claims every material limitation of the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

3. Claims 1-6 and 8-10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Suzuki (EP 1 088 537 A2).

Regarding claim 1, Suzuki teaches an absorbent core (M/M') useful for an absorbent article comprising a substrate layer (M), said substrate layer (M) comprising a first surface and a second surface, said absorbent core (M/M') further comprising a discontinuous layer of absorbent material (SAP), said absorbent material (SAP) comprising an absorbent polymer material, said absorbent material comprising an absorbent fibrous material, said discontinuous layer of absorbent material (SAP) comprising a first surface and a second surface, said absorbent core (M/M') further comprising a layer of thermoplastic material (hotmelt), said layer of

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thermoplastic material (hotmelt) comprising a first surface and a second surface wherein said second surface of said discontinuous layer of absorbent material (SAP) is in at least partial contact with said first surface of said substrate layer (M) and wherein portions of said second surface of said layer of thermoplastic material (hotmelt) are in direct contact with said first surface of said substrate layer (M) and portions of said second surface of said layer of thermoplastic material (hotmelt) are in direct contact with said first surface of said discontinuous layer of absorbent material (SAP); wherein said absorbent core (M/M') comprises a second substrate layer (M'), wherein said second substrate layer (M') comprises a first surface and a second surface, said absorbent core (M/M') further comprising a second discontinuous layer of absorbent material (SAP), said second discontinuous layer of absorbent material (SAP) comprising a first surface and a second surface, said absorbent core (SAP) further comprising a second layer of thermoplastic material (hotmelt), said second layer of thermoplastic material (hotmelt) comprising a first surface and a second surface;

wherein said second surface of said second discontinuous layer of absorbent material (SAP) is in at least partial contact with said first surface of said second substrate layer (M') and wherein portions of said second surface of said second layer of thermoplastic material (hotmelt) are in direct contact with said first surface of said second substrate layer (M') and portions of said second surface of said second layer of thermoplastic material (M') are in direct contact with said first surface of said second discontinuous layer of absorbent material (SAP);

wherein said first surface of said first substrate layer (M) faces said first surface of said second substrate layer (M'), wherein said first and second substrate layers (M)(M') do not contact each other (abstract; ¶ 0042)(see annotated fig. 17, *infra*).

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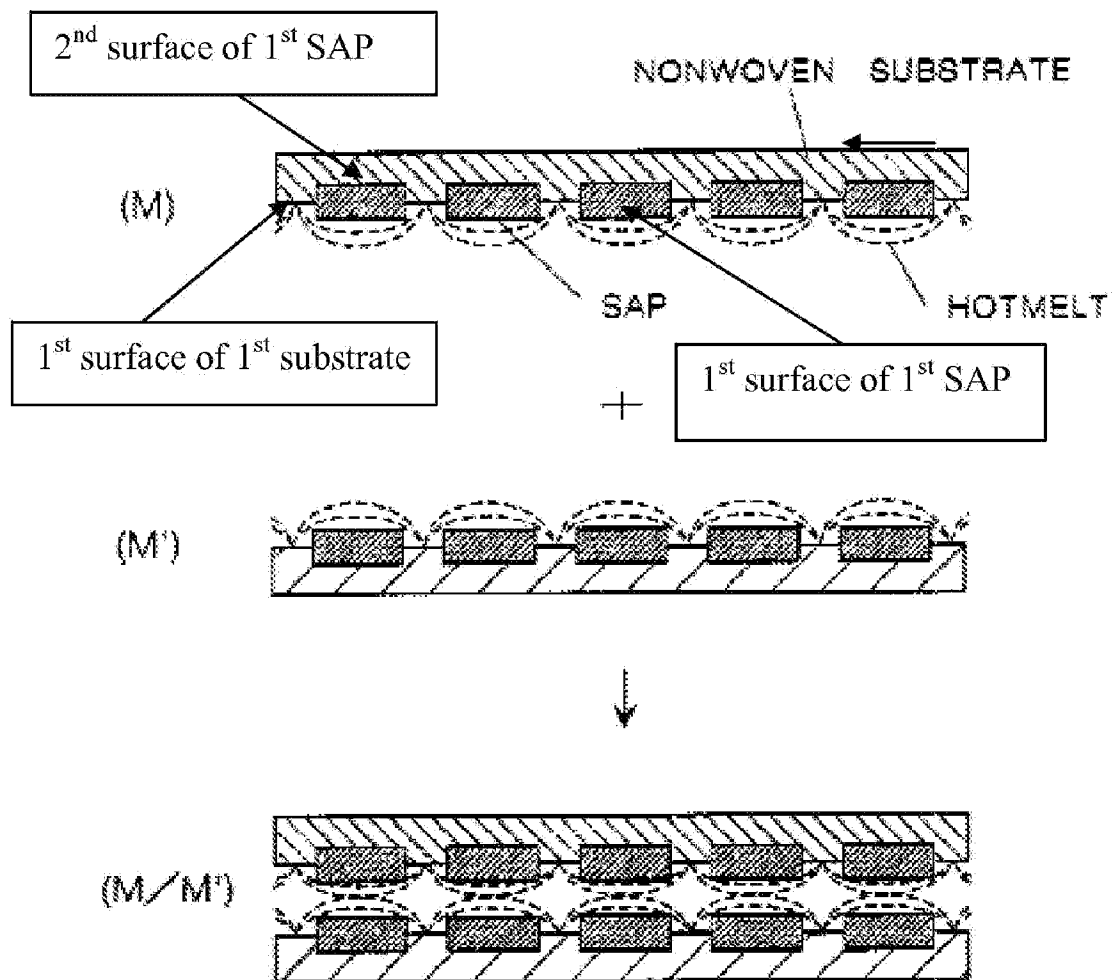


FIG.17

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Suzuki discloses that the SAP may be at least partly in the form of fibers and/or bonded to fine cellulose fibers (§s 0042 & 0043). Also, Suzuki discusses the desirability of maximizing the amount of resin (Id.)

Regarding claims 1, 6, 8 and 10, Suzuki does not expressly disclose the specifically claimed ranges of % of fibrous material, basis weight or performance vectors.

Optimization of ranges of parameters within prior art ranges or through routine experimentation is not sufficient to patentably distinguish the invention over the prior art. MPEP § 2144.05. One of ordinary skill in the art would have recognized that increasing the basis weight of absorbent material would increase the absorbent capacity of the absorbent core, while reducing it would result in less cost or bulkiness. One of ordinary skill in the art would have also recognized that minimizing the strike through time would result in faster absorption of liquid in the finished product. One would also recognize the benefits of maximizing the % of resin relative to fibers. Additionally, one of ordinary skill in the art would have recognized the benefit of optimizing the hydrophilicity of various layers depending on their function as uptake, surge management or retention. Thus these parameters are result-effective variables and as such, it would have been obvious to optimize them.

Regarding claim 2, Suzuki teaches that the thermoplastic material includes a hot melt adhesive (abstract)(fig. 17).

Regarding claims 3 and 4, Suzuki teaches that the thermoplastic material is fiberized and/or net-like (§ 0057).

Regarding claim 5, Suzuki teaches that the absorbent polymer includes particles (§ 0042).

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Regarding claim 9, Suzuki teaches at least one substrate layer and one cover layer (topsheet)(¶ 0032).

Response to Arguments

3. Applicant's arguments with respect to claims 1-5 and 8-10 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL G. BOGART whose telephone number is (571)272-4933. The examiner can normally be reached on M-F, 10-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Michael G. Bogart/
Examiner, Art Unit 3761

/Tatyana Zalukaeva/
Supervisory Patent Examiner, Art Unit 3761